



POLICE DEPARTMENT

February 21, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Keith Ross
Tax Registry No. 919653
Specialized Training Section
Disciplinary Case No. 2011-4742

The above-named member of the Department appeared before the Court on January 3, 2012, charged with the following:

1. Said Police Officer Keith Ross, assigned to Administrative Support Division, on or about November 21, 2010, in the confines of Queens County, engaged in conduct prejudicial to the good order, discipline or efficiency of the Department, to wit: said Police Officer shoved his [REDACTED] and placed his hands about her neck during a physical altercation.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT

2. Said Police Officer Keith Ross, assigned to Administrative Support Division, on or about November 21, 2010, in the confines of Queens County, failed to notify a patrol supervisor of his involvement in an off-duty domestic incident.

P.G. 212-32, Page 1, Paragraph 2 – OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE

The Department was represented by Rudolph Behrmann, Esq., Department Advocate's Office. Respondent was represented by John Tynan, Esq., Worth, Longworth & London LLP.

Respondent, through his counsel, pleaded Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

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DECISION

Respondent, having pleaded Guilty, is found Guilty.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent was appointed to the Department on April 15, 1997. He had been [REDACTED] Person A Person A for 18 years, and they had two daughters. The girls were [REDACTED] and [REDACTED] years old in November 2010.

Respondent testified that in late August 2010, he was diagnosed with [REDACTED] [REDACTED] He was asymptomatic, however. His doctor recommended that he [REDACTED] [REDACTED]

Respondent testified that he began [REDACTED] in mid- to late October, attending every two weeks. [REDACTED]

[REDACTED]

[REDACTED] The side effects included [REDACTED] and a [REDACTED]

Prior to the [REDACTED] Respondent was prescribed other medications to take in conjunction with the [REDACTED] to try to reduce or relieve [REDACTED] symptoms. He was also prescribed [REDACTED] a smoking-cessation drug, because he had to stop smoking before beginning [REDACTED] He was never informed of possible side effects. He later did some research on the matter and found numerous studies citing heightened aggression while using [REDACTED] and as an after effect. Respondent was also taking [REDACTED] This medication caused "incredible physical pain."

On Sunday, November 21, 2010, Respondent admitted, he got into an argument with his [REDACTED]. He did not remember specifically what the argument was about, but it had to do with going to church that day. "Things were rough in our relationship," Respondent testified. Prior to that date, his most recent [REDACTED] session was perhaps a week or two weeks before. He had stopped taking [REDACTED] at that time, but was still taking [REDACTED] and other prescriptions.

Respondent testified that the argument became heated and physical. He and Person A started pushing each other. He put his arms around her neck, near her collar bone, and pushed her away. He pushed her, hands together, using both hands. Respondent asserted that he did not recall if anything else physical occurred, although at one point his [REDACTED] bit him.

Respondent admitted that he did not call the Operations Unit but did call his supervisor, a sergeant, at his command to let him know.

Respondent testified that he went to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

When asked, "At any time since November 21, 2010, did the Department recommend to you or have you evaluated by the Psychological Services Unit to determine whether you needed to go to Department regulated counseling?" Respondent answered that he was interviewed by a Department psychologist and attended "[REDACTED]" at Police Headquarters.

On cross examination, Respondent admitted that he pushed Person A down into a chair. He denied that he was trying to choke her, saying that he was trying to push her away from him. He said he did not recall if he put his hands on her first. He admitted that while his [REDACTED] was on

the phone, he took the phone from her and hung up. When asked, "You were attempting to prevent her from calling someone, possibly the police?," Respondent answered, "I was hanging up my phone." He said that he did not recall if Person A was threatening him. After the incident, Respondent remained at his residence while his [REDACTED] left.

Respondent agreed that the children were home when the incident happened. He did not know what, if anything, they observed. He did not recall if they were in the same room during the incident.

Upon questioning by the Court, when asked if the children were upset during the incident, Respondent answered, "Yes. I think everyone in the house that day was upset." He indicated that any 911 call would have come from his [REDACTED] not him. She left the residence with the children. About 10 to 15 minutes later, two police officers and a patrol supervisor arrived at the home, followed by a lieutenant. Person A had gone to the 105 Precinct and made a complaint. She informed the personnel that Respondent was a member of the service.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on April 15, 1997. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to offenses relating to a physical fight with his [REDACTED] Person A Person A. He explained that in August 2010, he was diagnosed with [REDACTED] [REDACTED] That October, he began [REDACTED] and [REDACTED] treatment. This was given [REDACTED] Effects of the treatment included [REDACTED]

██████████ Respondent needed medication to ██████████
██████████ which caused intense pain. He was also required to stop smoking and was prescribed ██████████, a cessation medication, to help this process. He testified, however, that he later researched the matter and found that one of the possible side effects and after-effects of ██████████ was increased aggression.

On November 21, 2010, a Sunday, Respondent and Person A were arguing (Respondent had ceased taking ██████████ at this time). Respondent did not recall exactly what the argument was about but it might have had something to do with going to church. Their two daughters, then ██████████ and ██████████ years old, heard what was going on and were upset. Respondent and Person A were pushing each other. He pushed her away, placing both his hands around her neck and upon her collarbone. In doing so, Respondent pushed her down into a chair. At one point, Person A bit Respondent. She picked up the phone, possibly to call 911, and he hung it up.

Respondent testified that his ██████████ left the residence with the children. He did not contact either the patrol supervisor in the precinct of occurrence or the Operations Unit. Nevertheless, after 10 to 15 minutes, the patrol supervisor and two police officers arrived at his home, along with a lieutenant as well. Respondent later learned that Person A had gone to the precinct to make a complaint against him. Thus, after Respondent hung up the phone while Person A was using it, in all likelihood to call 911, she went to the precinct instead. Both Respondent and his ██████████ had recently gone through ██████████ for their problems.

The Department recommended a penalty of 15 vacation days. This is in keeping with precedent in these kinds of domestic incidents. See, e.g., Case No. 85753/09, May 1, 2010 (15 days already served on suspension for 15-year lieutenant with no prior disciplinary record that engaged in physical altercation with ██████████ they were having verbal dispute that escalated into

physicality); *Case No. 85566/09*, April 7, 2010 (11 vacation days and 4 days served on suspension for 6 year detective with no prior disciplinary record that had a verbal altercation with his [REDACTED] that became physical when he placed his hand on her face and knocked phone out of her hand as she was attempting to call 911).

Respondent suggested that the circumstances called for a mitigation of the penalty to 5 vacation days. He argued that the physical pain and mental stress from his [REDACTED] diagnosis and treatment were a factor in pushing his [REDACTED] and failing to report it.

The Court sympathizes with Respondent's diagnosis of [REDACTED] and the aggressive treatment that followed, but the Court does not see how this severe pain and stress mitigates pushing his [REDACTED] in the neck, putting his hands around her throat, and failing to report the incident to the Department. Cf. Case No. 81326/05, signed Jan. 20, 2010 (sergeant's claim that pain medication clouded judgment was rejected in absence of medical testimony that the medication caused him to engage in theft and harassment against former [REDACTED] affirmed sub nom. Buonviaggio v. Kelly, 2010 N.Y. Misc. Lexis 5100 (Sup. Ct., New York County, Sept. 20, 2010). Furthermore, Respondent's testimony was replete with equivocations and failures to recall simple details, like who first put his or her hands on whom, whether Person A threatened him, whether he hung up the phone as she was trying to call someone, and whether there was any further physical contact beyond what he described. The Court was left with the sense that Respondent was not completely forthcoming.


Thus, the instant matter is not one in which circumstances related to the misconduct call for mitigation of the penalty. Respondent's otherwise fine record should not diminish the penalty in a domestic-incident case. Accordingly, the Court recommends that Respondent forfeit 15 vacation days as a penalty.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED



JUL 18 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KEITH ROSS
TAX REGISTRY NO. 919653
DISCIPLINARY CASE NO. 2011-4742

In 2009 and 2011, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. He was rated 3.5 “Highly Competent/Competent” in 2008. He has been awarded nine medals for Excellent Police Duty [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials